

Emergency laws lack accountability

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Body

In times of crisis, states sometimes need the flexibility emergency powers provide. But flexibility can put the rule of law at risk. That's why well-designed emergency powers have careful safeguards. In Canada's Emergencies Act, one such safeguard is the inquiry legally triggered whenever the act is used.

The Rouleau report, tabled with Parliament last week, showed the rule of law in Canada is robust. But whether it remains so depends on what Canadians do next.

The Rouleau report looked back, but Canadians should take what we've learned, in this moment, and look ahead: with climate change, more crises are coming, a lot more. And neither our provincial, nor our federal emergency laws are future-ready. Canadians must take a cold hard look at the country's emergency laws and, as citizens, keep the pressure on our leaders so they don't drop the ball.

Both provincial and federal emergency laws need amendment, and not just in response to the last crisis, to which many of the recommendations in the Rouleau report relate. Emergencies are changing: Climate change means more natural disasters. Demands for and reactions against climate action will further polarize politics. And since emergencies rarely stay in their lane, political and natural crises will likely weave together with economic and pandemic emergencies, cascading one into another. We need to be ready, if we are to preserve accountability and the rule of law even in a crisis.

Because most climate change driven disasters are under provincial jurisdiction, Canadians should take a hard look at the lack of accountability in most provincial emergency legislation. Emergencies are frequent at provincial and municipal levels. But we've been ignoring how akin provincial powers are to that old War Measures Act: powers are vast, thresholds vague, accountability rare or absent.

To preserve the rule of law in Canada in the climate era, now is the time for Canadians to press provincial governments to amend these inadequate laws. The federal act shows there is no excuse for unaccountable emergency power. Flexibility doesn't need to negate accountability.

But the federal act needs amendment too. First, the act must recognize that climate era emergencies may not fit discretely into the act's existing categories of emergency (public welfare, public order, international, or war), each with its own threshold and available powers. We don't yet know what forms this braid of crises may take, but we do know emergencies rarely stay in their lane. How do we set a threshold that's clear and high enough to deter abuse, but flexible enough for the unknown? Perhaps an impossible challenge, yet so much depends on getting it at least approximately right.

Second, as crises become more complex, the act should require government to state explicitly and in detail, why specific orders and measures are necessary. Under Section 61, government must table emergency measures with

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Parliament, but it is not currently required to explain why measures are necessary or what they are specifically necessary for. This was a problem in the February 2022 emergency with the vague financial measures. It will only get worse in a yet more complex crisis. It's easy to hide abuse under the guise of necessity: Requiring future governments to put their cards on the table makes good sense.

Finally, we may need to anticipate that the year of relative stability during which the Rouleau Commission worked for public accountability may not remain the norm. How can we continue to protect the rule of law if crises are more frequent? There are no easy answers. All the more reason to get to work.

So what can Canadians do right now? In the last of his recommendations, Rouleau tells Parliament we expect a response. Let's demand government follow through, but in a way that looks ahead and not (just) back. And let's demand provinces and territories do their work too: The February 2022 emergency, and the pandemic emergency, showed their role is critical.

To preserve the rule of law in the coming crisis cascade, provincial emergency powers under the Ontario Emergency Management and Civil Protection Act must be made more rigorous and accountable. The Rouleau report is an opening, it provides momentum. Let's use it. Let's be ready for whatever our future holds.

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